UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte RAHUL JAIKRISHIN LALMALANI, JANE T. KIM,
JENNIFER C. TRAHAN, MARCUS A. LEWIS, MARY-
LYNNE WILLIAMS, LINDSEY R. BARCHECK,
WARREN G. STEVENS, SARAH J. BOWERS, and MIRKO MANDIC

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Appeal 2016-000725
Application 13/653,306[1]
Technology Center 2100

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Before STEPHEN C. SIU, TERRENCE W. McMILLIN, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
rejection of claims 1–7, 9–22, 24–27, 29, and 30, which are all the claims
pending in this application.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellants, the real party in interest is Microsoft Corporation.
App. Br. 3.
[2] Claims 8, 23, and 28 have been canceled. App. Br. 33, 37, 38 (Claims
App'x).

STATEMENT OF THE CASE

Introduction

Appellants' application relates to enabling a web browser to promote the availability of an installable application that is associated with a website to which the web browser has navigated. Spec. ¶ 4. Claim 1 is illustrative of the appealed subject matter and reads as follows with the disputed limitations *italicized*:

1.   A method comprising:

navigating, via a web browser having a web browser user interface, to a website having content, the web browser being configured to display a user interface instrumentality associated with the website, the user interface instrumentality being displayed in a location and having a first viewable appearance configured to be presented when the website does not have an installable application and a second different viewable appearance in the location when the website has an installable application, the second viewable appearance being user-selectable;

ascertaining, via the web browser, whether the website has any information associated with an installable application that can be used to enable consumption of at least some of the content of the website, the web browser being configured to provide contextual information to the installable application so that the content of the website can be consumed by either the web browser or the installable application;

responsive to ascertaining said information, ascertaining, via the web browser, whether the installable application has been installed;

responsive to the installable application not being installed, displaying, via the web browser, the second different viewable appearance of the user interface instrumentality in the form of an application store button sufficient to enable a user to navigate to an application store to acquire the installable

application;

responsive to the installable application being installed, *displaying a switching user interface in the web browser*, the switching user interface being configured to enable the user to opt to switch from the web browser to the installed application so that at least some of the website content can be consumed by the installed application, the contextual information being associated with a state of the web browser's current navigation; and

responsive to receiving an option to switch from the web browser to the installed application, visually replacing the web browser user interface with a user interface of the installed application through which at least some of the content of the website can be consumed.

The Examiner's Rejections

Claims 9–15, 21, 22, 24–27, 29, and 30 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.[3] Final Act. 6–7.

Claims 1–7, 9–22, 24–27, 29, and 30 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Hawkins (US 2010/0058191 A1; Mar. 4, 2010), Chatterjee et al. (US 2009/0055749 A1; Feb. 26, 2009), and Kim et al. (US 2008/0201367 A1; Aug. 21, 2008). Final Act. 8–19.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' contentions that the Examiner has erred. We disagree with Appellants' contentions. Except as noted below, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is

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[3] In the Final Office Action, the Examiner also rejected claims 16–20 under 35 U.S.C. § 101. *See* Final Act. 6. However, the Examiner withdrew this rejection in the Answer. *See* Ans. 15.

taken and (2) the reasons set forth by the Examiner in the Examiner's
Answer in response to Appellants' Appeal Brief. We concur with the
conclusions reached by the Examiner. We highlight the following additional
points.

Patentable Subject Matter

Appellants argue the Examiner erred in rejecting claims 9–15, 21, 22,
24–27, 29, and 30 under 35 U.S.C. § 101 as being directed to non-statutory
subject matter. App. Br. 9; Reply Br. 5–6. In particular, Appellants argue
the Examiner erred in construing the independent claims directed to a
"computer readable storage medium" to cover transitory signals because
"nothing in [the Specification] indicates that the phrase 'computer readable
storage medium' is intended to cover anything other than statutory subject
matter." App. Br. 9. Appellants argue the Examiner has not identified any
portion of the Specification that indicates the claims should cover transitory
signals.

Appellants have not persuaded us of Examiner error. As a matter of
claim construction, we apply the broadest reasonable interpretation of claim
terms, consistent with the Specification, as would be understood by one of
ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359,
1364 (Fed. Cir. 2004) (citations omitted).

The Examiner finds, and we agree, the Specification does not define
the term "computer readable storage medium" to mean anything other than
its ordinary meaning. Ans. 16. If the Specification is silent regarding the
meaning of "computer usable storage medium" that term is properly
construed to include both non-transitory and transitory signals. *Ex Parte
Mewherter*, Appeal 2012-007692, 2013 WL 4477509, at *7 (PTAB 2013)

(precedential). Transitory signals are unpatentable as non-statutory subject matter under § 101. *See In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007). Accordingly, we agree with the Examiner that independent claims 9 and 24 claim unpatentable subject matter. We, therefore, sustain the rejection of independent claims 9 and 24, as well as dependent claims 10–15, 21, 22, 25–27, 29, and 30.

Obviousness

Appellants argue the Examiner erred in rejecting claim 1 as obvious over Hawkins, Chatterjee, and Kim. App. Br. 11–18; Reply Br. 6–10. In particular, Appellants argue neither Hawkins, Chatterjee, nor Kim teaches or suggests "responsive to the installable application being installed, displaying a switching user interface in the web browser . . ." as recited in claim 1. App. Br. 14–18. Appellants argue Hawkins "clearly describes" that its "web browser" and "alternative application center" (the claimed "switching user interface") are "separate and distinct from one another." App. Br. 14. Appellants argue Figure 1A of Hawkins shows the web browser 102 and alternative application control center 104 are separate components in the computer system 101. App. Br. 16.

Appellants argue Chatterjee does not cure the deficiencies of Hawkins because Chatterjee teaches web applications as separate web browser add-ons and these web applications are not directed to enabling a user "to opt to switch from the web browser to the installed application so that at least some of the website content can be consumed by the installed application." App. Br. 17.

Appellants have not persuaded us of Examiner error. The Examiner finds, and we agree, Hawkins teaches an alternative application control

center 104 that is "configured to enable the user to opt to switch from the web browser to the installed application so that at least some of the website content can be consumed by the installed application." Ans. 18 (citing Hawkins, Fig. 4A, Fig. 4B, ¶¶ 11, 53).

The Examiner finds Hawkins does not expressly disclose that the alternative application control center 104 is displayed in the browser, but finds Hawkins suggests this arrangement to an ordinarily skilled artisan in Figures 3 and 4B. Ans. 18–20. Specifically, the Examiner finds Hawkins depicts the alternative application control center 104 in the top left corner of Figure 4B, showing the user interface with outlines of rectangles at its top. Ans. 19–20. The Examiner compares this user interface to the browser depicted in Figure 3 and finds these figures would have at least suggested to an ordinarily skilled artisan that the alternative application control center could be implemented in the browser because of the similarities in the pictures. Ans. 20.

Appellants have not persuasively rebutted the Examiner's findings. Appellants argue Hawkins does not expressly disclose the alternative application control center 104 is implemented in the browser (Reply Br. 5), but the Examiner does not find such an express disclosure (Ans. 18–20). Instead, the Examiner finds, and we agree, Hawkins at least suggests to an ordinarily skilled artisan that the alternative application control center 104 is part of the browser 102. Ans. 18–20.

Appellants' argument with respect to Chatterjee is also unpersuasive. Appellants argue Chatterjee does not teach or suggest the disputed limitation because the web applications in Chatterjee are not directed to enabling a user "to opt to switch from the web browser to the installed application so that at

least some of the website content can be consumed by the installed application." App. Br. 17. However, the Examiner has not relied on Chatterjee for this limitation. *See* Ans. 21–22. Instead, the Examiner relies on Hawkins for this limitation, and relies on Chatterjee only for expressly teaching a switching user interface for installed applications in the web browser (a limitation the Examiner finds Hawkins suggests as well). Ans. 21–22. One cannot show nonobviousness by attacking references individually when the rejection is based on a combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *see also In re Keller*, 642 F.2d 413, 425–26 (CCPA 1981).

Accordingly, we are not persuaded the Examiner erred in rejecting claim 1. Appellants argue the patentability of independent claims 9, 16, and 24 for the same reasons as claim 1. *See* App. Br. 18–29. We, therefore, sustain the rejections of claims 9, 16, and 24 for the same reasons. We also sustain the rejections of dependent claims 2–7, 10–15, 17–22, 25–27, 29, and 30, which were not argued separately from their respective independent claims. *See* App. Br. 22, 26, 29–30.

DECISION

We affirm the decision of the Examiner to reject claims 1–7, 9–22, 24–27, 29, and 30.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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